

STATE OF MICHIGAN  
COURT OF APPEALS

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CLYDE KEMP,

Plaintiff-Appellant,

v

LAW OFFICES OF CYRILL C. HALL, P.C.,

Defendant-Appellee.

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UNPUBLISHED

April 19, 2007

No. 267788

Oakland Circuit Court

LC No. 2002-041459-NO

Before: Donofrio, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff, Clyde Kemp, appeals as of right from a no cause of action judgment in this negligence case. After the jury found that plaintiff was not “injured in one or more of the ways claimed,” plaintiff moved for a new trial or for judgment notwithstanding the verdict (JNOV). Stating that it was within the province of the jury to assess the credibility of the physician witnesses, the trial court declined to find that the verdict was against the great weight of the evidence and denied plaintiff’s motion for new trial or JNOV. A review of the record evidence reveals that the jury could have discounted plaintiff’s evidence and relied on the defense evidence when it concluded that plaintiff was not injured in the way he claimed. Therefore, the verdict was not against the great weight of the evidence, and we affirm.

Plaintiff’s sole issue on appeal is that the trial court erred when it denied his motion for new trial or judgment notwithstanding the verdict for the reason that the jury verdict was not against the great weight of the evidence. We review a decision on a motion for judgment notwithstanding the verdict de novo. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). In considering such a motion, the evidence is viewed in the light most favorable to the non-moving party. *Id.* A motion for a new trial on the grounds that the verdict was against the great weight of the evidence is reviewed for an abuse of discretion, and substantial deference is given to the trial court’s ruling that the verdict was not against the great weight of the evidence. *Campbell v Sullins*, 257 Mich App 179, 193; 667 NW2d 887 (2003). “This Court and the trial court should not substitute their judgment for that of the jury unless the record reveals that the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *Id.*

Plaintiff argues that the verdict was against the great weight of the evidence because after finding that defendant was negligent, the jury found that plaintiff did not suffer any injury from the fall. Plaintiff specifically asserts that the evidence clearly showed that he suffered some

injury, and only the nature and extent of the injury were disputed. Defendant, Law Offices of Cyrill C. Hall, P.C., responds arguing that based on the evidence presented, the jury could have found that plaintiff suffered no injury from the fall, or that any of plaintiff's physical limitations were related to earlier accidents or incidents and were completely unrelated to the fall.

Plaintiff's argument on appeal misinterprets the jury's findings. The jury's finding that defendant was "negligent" in maintaining the handrail on the stairway leading to the basement of his office building does not logically require a finding that plaintiff was injured as a result of that negligence. In fact, the jury verdict form specifically asked: "Was the plaintiff injured in one or more of the ways claimed?" The jury answered the question in the negative. "[T]he jury is free to credit or discredit any testimony," and a new trial cannot be ordered if an interpretation of the evidence would support the jury's decision. *Kelly v Builders Square, Inc.*, 465 Mich 29, 39, 42; 632 NW2d 912 (2001).

The jury's finding indicates that plaintiff was not injured as a result of the relevant incident or defendant's negligence. The evidence showed that plaintiff reported varying dates and places for a fall to health care providers. Further, although he claimed at trial that he fell while ascending the stairs, some health care providers reported that he fell while descending the stairs. The jury also heard evidence that plaintiff's injuries could have been attributable to accidents that occurred in 1988. And, a physician testified that plaintiff was permanently disabled due to earlier injuries. Our review of the evidence reveals that an interpretation of the evidence supports the jury's decision. *Kelly, supra* at 39.

Plaintiff asserts that the medical records and expert testimony consistently attribute his shoulder injury to falling on the stairs rather than other accidents. But, the health care providers' diagnoses regarding the cause of injury were necessarily dependent on plaintiff's reporting of his injury and his view of the cause of the injury. There is no error here because the jury could have simply discredited any diagnosis dependent on plaintiff's recounting of his history as self-serving. Plaintiff also asserts that defendant has not shown that his shoulder injury was attributable to another accident. This argument fails because it is axiomatic that plaintiff, and not defendant, has the burden of proving each element of his or her claim in a personal injury suit. See *Kelly, supra* at 39.

Affirmed.

/s/ Pat M. Donofrio  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey